

6-5-2017

## State v. Giovanni Respondent's Brief Dckt. 44607

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	Nos. 44607 & 44608
Plaintiff-Respondent,	)	
	)	Kootenai County Case Nos.
v.	)	CR-2014-21814 & 2015-17274
	)	
POETRIUS C. GIOVANNI,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Giovanni failed to establish that the district court abused its discretion when it revoked his probation and retained jurisdiction?

Giovanni Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Giovanni pled guilty to grand theft in case number 44607, and the district court imposed a unified sentence of six years, with two years fixed, and retained jurisdiction. (R., pp.56-58.) After a period of retained jurisdiction the district court placed Giovanni on probation for three years. (R., pp.73-75.) Four months after being placed on

probation, Giovanni pled guilty to another charge of grand theft in case number 44608. (R., pp.113-14.) He also admitted to having violated his probation in case number 44607. (R., pp.113-14.) The district court revoked Giovanni's probation in case number 44607, imposed a consecutive unified sentence of six years, with two years fixed, in case number 44608, and retained jurisdiction in both cases. (R., pp.116-18.) Following the period of retained jurisdiction, the district court placed Giovanni on probation in both cases for three years. (R. pp.120-21.) One month later, Giovanni's probation officer filed a report of violation, alleging Giovanni had violated his probation by being arrested for burglary. (6/21/16 Report of Violation (Augmentation).) Giovanni pled guilty to a reduced charge of petit theft and admitted to violating his probation. (R., pp.136-37, 140-42.) The district court revoked Giovanni's probation in both cases and retained jurisdiction a third time. (R., pp.140-42.) Giovanni filed a timely notice of appeal from the order revoking probation in the grand theft cases. (R., pp.143-50.)

Giovanni asserts that the district court abused its discretion by revoking his probation in light of his willingness to participate in treatment and because his crimes were "nonviolent." (Appellant's brief, pp.3-6.) Giovanni has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving

the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Giovanni has repeatedly demonstrated he is not an appropriate candidate for probation. Giovanni has a criminal history that includes multiple misdemeanor charges for theft and multiple felony convictions for assault. (PSI, pp.4-7.) Less than one month after completing the retained jurisdiction program and being placed on probation in case number 44607, Giovanni again committed a grand theft. (R., pp.73, 85-97.) Giovanni pled guilty to another count of grand theft in case number 44608, and the court retained jurisdiction a second time. (R., pp.116-18.) Less than one month after Giovanni’s second rider, he was arrested for burglary. (R., pp.126-27; 6/21/16 Report of Violation.) At the disposition hearing for Giovanni’s probation violations, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for revoking Giovanni’s probation and retaining jurisdiction. (10/3/16 Tr., p.31, L.7 – p.32, L.21.) The district court concluded, “Maybe you’ll get more out of this rider. You sure as heck weren’t at all remorseful the first time around or really the second time around, and I’ll just leave it at that.” (10/3/16 Tr., p.34, Ls.18-21.) The state submits that Giovanni has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A)

Conclusion

The state respectfully requests this Court to affirm the district court's orders revoking probation, ordering Giovanni's underlying sentences executed, and retaining jurisdiction.

DATED this 5th day of June, 2017.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of June, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

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1 THE COURT: That's ordered. It will be filed  
2 in the PSI in the older cases. So any objection to the  
3 Court reviewing that?  
4 MR. SCHWARTZ: No, Your Honor.  
5 MS. MCCLINTON: No objection.  
6 *(Pause in proceedings)*  
7 THE COURT: All right. On the newer case I am  
8 going to impose six months, I'm sorry, one year in the  
9 county jail, give you credit for 121 days from June 4th  
10 through the present date, suspend 244 days, and put you  
11 on two years of unsupervised probation, and so your  
12 credit for time served on that case ends today, and in  
13 the newer case I am going to revoke your probation and  
14 impose the prison sentences that were imposed and send  
15 you on your third rider primarily to protect the public,  
16 and if you get some programming, great, but I'm kind of  
17 to the point where I don't really care if you do.  
18 I'm not overly confident that I will put you  
19 on probation when you come back, and I'm real close  
20 right now to just simply imposing your prison sentences.  
21 I don't know how else the public's going to be  
22 protected. You've been on two riders, and you commit  
23 thefts as soon as you get back. There's nothing about  
24 this mental health evaluation that explains anything  
25 that you're doing other than it does diagnose you with

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1 courtroom. Do you have any question about anything I've  
2 said?  
3 THE DEFENDANT: I don't have any questions. I  
4 don't know at this point if this is going to change  
5 anything, but there are three things that are part of  
6 that mental health -- the psychological evaluation that,  
7 um, when I read mine that I disagreed with. One was the  
8 fact that she says at the time, and I don't remember  
9 what page it is, but she mentions that I didn't have any  
10 thoughts of suicide. Yet further down on that same page  
11 in Inpatient it does mention that I've been, uh,  
12 admitted into -- for a problem involving my trying to  
13 kill myself, and further on at another point there is  
14 other mention as well of my attempting to commit suicide  
15 by going to freeway overpasses and trying to jump off  
16 them in front of traffic.  
17 THE COURT: Okay.  
18 THE DEFENDANT: Uh, so it seems contradictory  
19 there. Second, there's -- I can't remember the second  
20 one, but the third part is is -- at the end it talks  
21 about no remorse, no feelings of guilt, and that was one  
22 of the things at the very end of our evaluation she  
23 talked to me about was do you feel any remorse or any  
24 guilt, and I told her yes and that I -- knowing just  
25 based off the AA program that there is a part where you

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1 having antisocial personality. You're thinking like a  
2 criminal and that's all you're doing, and that's what it  
3 says. It doesn't diagnose you with kleptomania. It  
4 doesn't diagnose you with depression. It doesn't  
5 diagnose you with bipolar. No recommendations for any  
6 medication. There's no pill that's going to help you.  
7 If you come back with anything less than a  
8 plan for Good Samaritan, I assure you that I will impose  
9 your prison sentences. Maybe if you did a year-long  
10 program with Good Samaritan after your rider, maybe they  
11 could help you develop some moral integrity to where you  
12 stop doing this, but I will tell you right now, I will  
13 send you to prison if you come back with anything less  
14 than a Good Samaritan plan, a year-long plan for some  
15 faith-based housing, but I can tell you right now based  
16 on the report that I've read from Dr. Carlberg, you  
17 would never get into mental health court, and your  
18 attorney just said that you don't do well in group  
19 settings. Well, mental health court's four times a week  
20 minimum group settings, so you're not going to do well  
21 even if you could get in.  
22 So you need to know you've got 42 days from  
23 today's date to appeal my decision in all these cases,  
24 and if you have any question about your appellate  
25 rights, talk to Mr. Schwartz before you leave the

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1 take an inventory of the things you've done and then you  
2 try and make amends. I was thinking of doing that, but  
3 the program is designed specifically that you go step  
4 one, then step two, then step three, and that's like  
5 step six or seven, and so as much as I wanted to do  
6 those things, as much as I have been feeling guilt or  
7 remorse for not only the attempted thefts that I've  
8 committed here in Kootenai County but thefts I've gotten  
9 away with previously, um, it's not -- it wasn't -- you  
10 know, it wasn't within me to do that because you should  
11 start at the beginning, not just jump right in the  
12 middle.  
13 THE COURT: Well, I have no reason to -- I  
14 certainly have no reason to disagree with the findings  
15 of Dr. Carlberg. Maybe now that you've started with the  
16 twelve-step program and started learning some of the  
17 things that you should've had, you know, from childhood,  
18 maybe there's hope for you on this rider. Maybe you'll  
19 get more out of this rider. You sure as heck weren't at  
20 all remorseful the first time around or really the  
21 second time around, and I'll just leave it at that. All  
22 right?  
23 THE DEFENDANT: Yes, sir.  
24 THE COURT: Thank you.  
25 *(Matter adjourned)*